

3 TAXABILITY OF WAGES

A. Definition of Wages

"Wages" means every form of payment directly or indirectly payable by an employing unit to an individual for personal services. This includes salaries, commissions, vacation pay, dismissal pay, bonuses, tips, certain fringe benefits, and payments in kind and any other similar advantage received from the employing unit, whether paid directly or indirectly. It may also include rent, housing and meals. Tips are only taxable to the extent declared in writing (accounted for) by the employee to the employer.

Wisconsin adopted the federal definition of wages for UI tax purposes as of 1/1/93 with two exceptions:

- To determine initial coverage of an agricultural entity, only cash wages are considered. However, once covered, the employer must include all cash and non-cash payments for agricultural labor as wages.
- The value of employee achievement awards (that is compensation for services) is included as wages.

Report wages in the calendar quarter in which they are paid or constructively paid. Constructive payment occurs when your employee has the option of receiving payment but instead chooses to defer payment.

B. Fringe Benefits

1. Deferred Compensation

Taxable:

- 401(k) Salary Reduction Agreement amount.
- Discretionary Contribution. When your employee has an option to take a portion of the employer-paid contribution in cash, that portion,

whether taken in cash or left in the fund, is considered to be constructively received.

- Compensation deferred under Nonqualified Plans
- Payments from non-qualified plans are taxable as of the later of the date the services are performed, or the date there is no substantial risk of forfeiture of the rights to such amount. Generally the amount deferred will be taxable when paid, unless it can be shown that there is no longer a substantial risk of forfeiture (i.e., the employer has set the deferred amount aside in a separate account or fund established in the worker's name).

Not Taxable:

- Discretionary Contribution. This is an employer contribution to your employee's account out of company profits, when the amount is not available to your employee until separation.
- Payments made to a 401(a) qualified trust, except for payments made to or from a 401(a) trust which is administering the 401(k) plan.

2. Section 125(b) (Cafeteria Plans)

Taxable:

- Acceptance of cash payment (cash option) in lieu of participation in the 125(b) plan is taxable.
- Unexpended amounts paid to employees at year-end are taxable.
- 401(k) Salary Reduction Agreement amount

Not Taxable:

- Premium Only Plan. Your employee pays for particular benefits with pre-tax dollars through a salary reduction agreement. There is an option not to join the plan (cash option).

- Premium and Flexible Spending Account. You deduct pre-tax dollars through a salary reduction agreement to pay for employee selected benefits, based on your employee's estimate of charges. Any unexpended monies revert to you, the employer. There is an option not to join the plan (cash option).
- Cafeteria Plan. You provide your employee with a fixed amount to purchase benefits. Money expended for these benefits is treated as pre-tax. There is an option not to join (cash option).

3. Sickness or Disability Pay

- Sickness or accident disability payments may be made under a plan or system you established which makes provisions for your employees and their dependents generally or, perhaps less commonly, they may be made more informally or only to certain employees.
- Sickness or accident disability payments which are made to your employee or any of his/her dependents (directly or through a third-party payer) during the first six months starting after the last calendar month the employee worked for you, are reportable/taxable as wages for UI contribution purposes.
- Worker's Compensation payments made to your employee or any of his/her dependents are not taxable for UI contribution purposes.
- Sickness or accident disability payments provided by a third party insurer, but financed by employer and employee premiums, are taxable only for the portion financed by employer-paid premiums. (Employer payments on behalf of employees using

employee pre-tax dollars are considered employer payments.)

4. Employee Portion of FICA Taxes

- If the employer pays the employee portion of FICA taxes, it is taxable unless it's for domestic service in a private home or agricultural labor.

5. Payment in Kind

Compensation paid in any form is taxable wages (unless specifically excluded, such as expense reimbursements or employee moving expenses). Some common types of payment in kind are; housing, meals, merchandise discounts, transportation, employee contest prizes, personal use of a company car and club memberships. This list is not all-inclusive.

The tax status of the following types of payment in kind changed effective January 1, 1993.

Meals and lodging may be nontaxable, but the following criteria must be met:

- a. It is furnished on behalf of the employer.
- b. It is for the convenience of the employer.
- c. It is on the employer's premises.
- d. Your employee is required to accept it as a condition of employment (lodging only).

Despite this general rule, all in-kind payments for agricultural labor remain taxable.

6. Value of Room and Meals

DWD 101 states for purposes of s.108.02(26) (wages), the employer shall value lodging and meals at the

actual value or, if the actual value is not available, the employer shall make a reasonable estimate of the value. If the actual value or reasonable estimate is not available, the department shall value lodging and meals as follows:

(1) Lodging	\$105.00 per week	or \$15.00 per day;	and
(2) Meals	\$86.00 per week,	\$12.30 per day or	\$4.10 per meal.